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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS A. SCOTT,

Defendant and Appellant.

B195468

(Los Angeles County
Super. Ct. No. TA084891)

APPEAL from a judgment of the Superior Court of Los Angeles County,
John J. Cheroske, Judge. Affirmed.

Christine C. Shaver, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Louis A. Scott (Scott) appeals the judgment entered following his plea of no contest to two counts of resisting a police officer in the performance of his or her duties (Pen. Code, § 69),¹ possessing a controlled substance (Health & Saf. Code, § 11350, subd. (a)), being a felon in possession of a firearm (§ 12021, subd. (a)), unlawfully possessing ammunition (§ 12316, subd. (b)(1)), and being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). The trial court sentenced Scott to a total term of 16 months in state prison. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

At approximately midnight on May 27, 2006, Los Angeles County Deputy Sheriff Kamal Ahmad (Ahmad) and approximately three other law enforcement officers responded to a citizen complaint directing them to a residence at 11209 Main Street. When, upon arriving at the location, Ahmad saw evidence indicating a burglary had been committed, he decided to investigate. Ahmad went to Scott's residence at 11209 3/4 Main Street and knocked on the door. Scott answered and stepped outside to speak with the deputy. Ahmad noticed that Scott's pupils were "abnormally dilated," that Scott was sweating, that he was shifting his weight from foot to foot and that he was constantly pressing his lips together. Scott's symptoms led Ahmad to believe Scott was under the influence of a stimulant.

Ahmad asked Scott if he was on parole or probation and Scott replied that he was on "felony probation for assault on a police officer with a gun." When the deputy asked Scott if he had any weapons, Scott stated he had "some guns in the house that were his."

Ahmad took Scott into custody. Scott was cooperative as he was walked to the patrol car. However, once he was seated inside the car, Scott began to scream and kick at the car's window. To prevent Scott from breaking the window, Ahmad opened the car

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The facts have been taken from the transcript of the preliminary hearing.

door. Scott got out, pushed past Ahmad and, while still “yelling and screaming,” began violently swinging his fists toward another officer’s head. Ahmad sprayed Scott with pepper spray, which had no effect on Scott. Ahmad then tackled Scott from behind, bringing him to the ground. One of the other officers was able to subdue Scott by “deploy[ing]” a taser.

A search of Scott’s apartment revealed a rifle on the bedroom floor. From inside the bedroom, officers also recovered “numerous rounds of ammunition” and a small, plastic baggie containing an “off-white, rock-like substance” later determined to contain .13 grams of cocaine base.

2. Procedural History.

In an information filed July 12, 2006, Scott was charged with two counts of obstructing or resisting a police officer in the performance of his or her duties (§ 69), battering a peace officer (§ 243, subd. (c)(2)), possessing a controlled substance (Health & Saf. Code, § 11350, subd. (a)), being a felon in possession of a firearm (§ 12021, subd. (a)(1)), unlawfully possessing ammunition (§ 12316, subd. (b)(1)), and being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)).

At proceedings held on September 8, 2006, Scott made a motion for discovery of police officer records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). The trial court granted the *Pitchess* motion as to Deputy Ahmad and two other officers, Vallozzi and Zuniga. After conducting an in camera hearing, the trial court ruled there were “no discoverable issues” as to Zuniga and Vallozzi. However, as to Deputy Ahmad, the court determined there were two discoverable incidents and ordered production of the appropriate records.

Scott made a motion to suppress evidence pursuant to section 1538.5 on October 18, 2006. At the hearing held on the motion, Ahmed testified he and his partner, Deputy Chow, were investigating the burglary of the middle unit of a triplex at 11209 Main Street. While inside the apartment, the deputies discovered that an “attic access door” was ajar and footprints on the shelves of an adjacent closet led up to the door.

Further investigation revealed one could access all three of the apartments in the triplex by way of the attic.

Ahmed and Chow went to the rear unit, Scott's residence at 11209 3/4 Main Street, to try to determine whether anyone had entered that unit through the attic access door or if its occupants had "heard anything going on or could help . . . out with the burglary investigation." When the deputies knocked, Scott opened the door, then stepped outside. When, in response to Ahmed's questions, Scott informed the deputies he was on probation for assaulting a peace officer with a firearm and that he had guns inside the apartment, Ahmed decided to detain Scott.

Two other occupants of the apartment at 11209 3/4 Main Street, Scott's girlfriend, Tina, and his brother, Calvin, then stepped outside of the apartment. Calvin indicated he lived at the apartment, but slept in the living room. Scott, who also lived at the apartment, slept in the bedroom. When asked if he knew whether there were any firearms in the apartment, Calvin indicated he did not know. When Ahmed then asked Calvin if the deputies could go inside the apartment to search for firearms, Calvin gave the officers permission to enter. From the living room of the apartment, Ahmed could see into the bedroom. On the bedroom floor, in plain view, Ahmed saw a rifle. When Ahmed entered the bedroom to recover the rifle, he saw, in plain view on a table, what appeared to be rock cocaine.

Scott testified that, when he answered the door, Ahmed directed him to step outside. Scott declined, informing the deputy he "could talk to him quite fine through the bar door." However, after Ahmed determined Scott was on probation, Scott stepped outside his apartment so that Ahmed could search him. Scott stated his rifle was not on the bedroom floor, but under the mattress.

The trial court denied the motion to suppress evidence. The court indicated it did not "see this as any kind of a probationary search." The trial court believed the deputies were conducting an "honest investigation, looking for a burglary," and that they had lawfully entered the apartment after having been given permission by Scott's brother,

Calvin. Once inside the living room, the officers discovered the rifle in plain view and were entitled to enter the bedroom to retrieve it. Once in the bedroom, the deputies discovered the narcotics in plain view.

At proceedings held on November 14, 2006, the trial court indicated that, if Scott were willing to enter a plea in the case, the court would sentence him to 16 months in prison, the term to run concurrently with a sentence imposed for his violation of probation in another matter. Scott conferred with his counsel, then decided to enter a plea.

Scott was advised of his right to a court or jury trial, to confront and cross-examine the witnesses called to testify against him, to present a defense and his privilege against self-incrimination. He then pleaded no contest to two counts of resisting a police officer as alleged in counts one and two of the information, possession of cocaine as alleged in count four of the information, being a felon in possession of a firearm as alleged in count five of the information, possession of ammunition as alleged in count six of the information, and being under the influence of cocaine as alleged in count seven of the information. The trial court dismissed the charge of battery of a police officer as alleged in count three of the information in furtherance of justice pursuant to section 1385.

The trial court sentenced Scott to the low terms of 16 months in prison for his convictions of counts one, two, four, five and six, the terms to run concurrently to one another. As to count seven, the trial court imposed a concurrent, low term of one year in prison. Scott was given presentence custody credit for 172 days actually served and 86 days of good time/work time, for a total of 258 days.

On November 17, 2006, Scott filed a timely notice of appeal based on the trial court's denial of his motion to suppress evidence pursuant to section 1538.5.

This court appointed counsel to represent Scott on appeal on February 15, 2007.

CONTENTIONS

After examination of the record, appointed counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed March 21, 2007, the clerk of this court advised Scott to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

APPELLATE REVIEW

We have examined the entire record and are satisfied Scott's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259 [145 L.Ed.2d 756]; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J